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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-221314

**DATE:** March 12, 1986

**MATTER OF:** Delaware East Wind, Inc.

**DIGEST:**

Bid submitted in corporate name was properly rejected where corporation's charter had been revoked for nonpayment of franchise taxes.

Delaware East Wind, Inc. (DEWI), protests the rejection of its bid under invitation for bids (IFB) No. DLA100-85-B-1169 issued by the Defense Logistics Agency (DLA).

We deny the protest.

Ten bids were received at the October 10, 1985, bid opening. The contracting officer rejected DEWI's low bid after receiving a certificate under seal from the Secretary of State, State of Delaware, certifying that on March 1, 1984, the firm's corporate charter had become "inoperative and void" for nonpayment of franchise taxes. See Del. Code Ann., tit. VIII, § 510 (1985). The contracting officer determined that since DEWI had forfeited its corporate status, it could not exercise powers to act as a corporation and bind the corporation to perform.

DEWI maintains that the corporation was bound by its bid. The firm contends that a Delaware corporation such as DEWI which has had its charter revoked for nonpayment of taxes is, in effect, a de facto corporation which, under Delaware law, could not deny its corporate existence. In support of its contention, DEWI relies upon the decision in Fredric G. Krapt & Son, Inc. v. Gorson, 243 A.2d 713 (Del. Sup. Ct. 1968), in which the Supreme Court of Delaware held that the president of a corporation was not personally liable for breach of a contract which was entered into on behalf of the corporation during the period the corporation's charter was forfeited for nonpayment of franchise taxes. See also Wax v. Riverview Cemetery Co., 24 A.2d 431

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(Del. Sup. Ct. 1942), and Watts v. Liberty Royalties Corp., 106 F.2d 942 (10th Cir. 1939), cited by the protester in support of its contention.

As a general rule, an advertised contract may not be made to any entity different from that which submitted the bid, Protectors, Inc., B-194446, Aug. 17, 1979, 79-2 C.P.D. ¶ 128, and, where a bid represents that it was submitted by a corporation, it should be disregarded if no such corporation exists. D.J. Findley, Inc., B-213310.2, Nov. 30, 1984, 84-2 C.P.D. ¶ 588; Transco Security, Inc., of Ohio, B-200470, Apr. 15, 1981, 81-1 C.P.D. ¶ 287; 41 Comp. Gen. 61 (1961). Otherwise irresponsible parties could undermine sound competitive bidding procedures by submitting bids that could be avoided or backed up by real principals as their interests might dictate. D.J. Findley, Inc., B-213310.2, supra.

DLA submitted a certificate signed under seal on November 20, 1985, by the Secretary of State, State of Delaware, which reads as follows:

"I Michael Harkins, Secretary of State of the State of Delaware, do hereby certify that the Certificate of Incorporation of the 'Delaware-East Wind, Inc.,' was received and filed in this office the tenth day of August, A.D. 1979, at 9 o'clock A.M. And I do hereby further certify that the aforesaid Corporation is no longer in existence and good standing under the laws of the State of Delaware having become inoperative and void the first day of March, A.D. 1984, for non-payment of taxes. And I do hereby further certify that the aforesaid Corporation was so proclaimed in accordance with the provisions of the General Corporation Law of the State of Delaware, on the twenty-seventh day of June, A.D. 1984, the same having been reported to the Governor as having neglected or refused to pay their annual Franchise Taxes." (Emphasis added.)

Thus, according to the Secretary of State, State of Delaware, at the time of the October 10, 1985, bid opening, Delaware East Wind, Inc., was not in existence.

DEWI argues that, notwithstanding the fact that its corporate charter had been revoked, a bid submitted in its corporate name would bind the corporation and cites several decisions which it claims support this argument. The decisions the protester relies upon, however, do not suggest that a corporation which had its charter revoked survives for bidding purposes. In Fredric G. Krapt & Son, Inc. v. Gorson, supra, the court found that upon forfeiture of a charter for failure to pay franchise taxes, all of the corporation's powers become inoperative but, upon reinstatement, the prior acts and contracts performed during such period were validated. Therefore, at the time of bidding, the corporate powers were inoperative and, by obtaining reinstatement or not, the corporation had the option of validating the bid.

Also, since the Secretary of State, State of Delaware, had certified that DEWI was not in existence under the laws of the State of Delaware, which certification the contracting officer was aware of at the time DLA contemplated award, there was sufficient legal doubt as to whether the firm's bid was a binding offer to perform. We find that the contracting officer properly rejected DEWI's bid. See Transco Security, Inc. of Ohio, B-200470, supra.

The protest is denied.

*Harry R. Van Cleve*

Harry R. Van Cleve  
General Counsel